

**ORDINANCE NO. 2023-42**

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE  
CHAPTER 6 – ENVIRONMENTAL PROTECTION AND  
CHAPTER 13 – INFRASTRUCTURE IMPROVEMENT REQUIREMENTS**

**WHEREAS**, the City of Brevard Planning Board has recommended that Brevard City Code, Unified Development Ordinance Chapter 6 – Environmental Protection and Chapter 13 – Infrastructure Improvement Requirements; and,

**WHEREAS**, the City Council of the City of Brevard finds that the proposed amendment is consistent with the following elements of the City of Brevard Comprehensive Plans:

*Building Brevard 2030*

- **LUH- 19:** *Enhance communication of land use planning efforts, policy development, approvals and processes. Create online public information portal to provide updates on proposed and in-progress development projects. Strive to make planning documents and UDO more approachable and user friendly to empower citizens to understand and advocate for their neighborhoods.*
- **PNRC- 10:** *Preserve steep slopes and natural areas adjacent to Pisgah Forest. Continue to enforce steep slope and stream buffer requirements for new development. Coordinate with landowners and land trust to conserve strategic lands.*

and,

**WHEREAS**, a public hearing was conducted on Monday, August 21, 2023, by the Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Unified Development Ordinance be amended as outlined below.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:**


**SECTION 01.** Brevard City Code Unified Development Ordinance is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

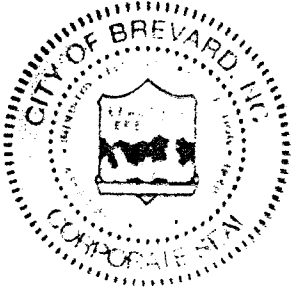
**SECTION 02.** As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

**SECTION 03.** If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

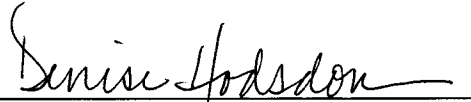
**SECTION 04.** This Ordinance shall be in full force and in effect from and after the date of its adoption and approval.

Adopted and approved upon first reading this the 5<sup>th</sup> day of September 2023.

  
Maureen Copelof  
Mayor

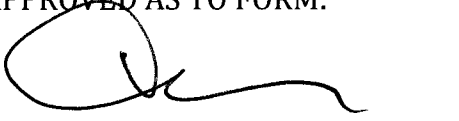


ATTEST:

A handwritten signature in cursive script, reading "Denise Hodsdon", written over a horizontal line.

Denise Hodsdon  
City Clerk

APPROVED AS TO FORM:

A handwritten signature in cursive script, reading "Mack McKeller", written over a horizontal line.

Mack McKeller  
City Attorney

**EXHIBIT A**

1 **6.7. Surface water protection requirements.**

2 A. *Purpose and intent:* The purpose of this section is to provide a network of protected  
3 stream corridors thereby helping to maintain water quality, provide wildlife habitats,  
4 filter pollutants, store floodgates, and contribute to the "green infrastructure" of the  
5 City of Brevard and lands within its jurisdiction. Stream systems are comprised of each  
6 stream and its respective drainage basin. Streams have the primary natural functions  
7 of conveying storm, ground, and surface waters, storing flood waters, and supporting  
8 aquatic life. Vegetated lands adjacent to the stream channel serve to protect the  
9 stream's ability to fulfill its natural functions. Surface water protection areas have the  
10 primary natural functions of protecting water quality by (1) filtering sediments and  
11 pollutants such as nitrogen, phosphorus, trace metals, and hydrocarbons, (2)  
12 providing intermittent storage for flood waters, (3) allowing channels to meander  
13 naturally, and (4) providing suitable habitat for wildlife.

14 B. *Applicability:* This section shall apply to all surface waters (as defined by this  
15 ordinance) and all non-encroachment areas and regulatory floodways (as delineated  
16 upon the most recently published Flood Boundary and Floodway Map (FBFM) and/or  
17 Flood Insurance Rate Map (FIRM), within the planning jurisdiction of the City of  
18 Brevard.

19 C. *Relationship to previously approved development plans, structures, and uses:* Uses and  
20 structures approved and constructed in a protection area prior to the enactment of  
21 this ordinance may remain as nonconformities, subject to any legal requirements  
22 attributed to that status. All development plans, development projects and uses  
23 permitted subsequent to the enactment of this ordinance, including expansions to  
24 previously approved and constructed uses and structures, shall comply with the  
25 surface water protection requirements of this ordinance.

26 D. *Surface water protection area delineation:* Surface water protection area requirements  
27 apply to the regulatory floodway and non-encroachment areas, as well as lands within  
28 30 feet from the top of each bank of a stream or other surface water body.

- 29 1. For streams and other surface waters with defined channels, protection area  
30 widths are measured horizontally on a line perpendicular to the surface water,  
31 landward from the top of the bank on each side of the channel.
- 32 2. "Top of bank" shall be determined by the administrator by considering factors  
33 such as the break in slope for a watercourse and the presence of streamside  
34 vegetation.
- 35 3. For rivers, streams, creeks, brooks, and any other continuous body of surface  
36 water flowing within the bed and banks of a channel, the determination of  
37 applicability of this section shall be based on the water body's inclusion on the NC  
38 Surface Water Classifications Schedule and Map, as maintained by the Division of  
39 Water Resources of the North Carolina Department of Environmental Quality.
- 40 4. For wetlands, as defined in this ordinance, protection area widths are measured  
41 horizontally, landward from the outermost point at which wetland conditions can  
42 be identified.
- 43 5. For ponds, lakes, and other impounded surface waters, protection areas widths  
44 are measured horizontally, landward from the ordinary high water line.  
45 Protection areas requirements do not apply to wet ponds used as structural  
46 stormwater control and treatment measures for stormwater.
- 47 6. For other surface waters, the protection area shall be determined by the  
48 administrator in consideration of the purposes of this section.
- 49 7. When a combination of floodway/non-encroachment area and/or surface water  
50 types exist, the most restrictive measurement of surface water protection area  
51 shall apply.

52 E. *Surface water protection area requirements:*

- 53 1. Protection areas shall be left in a naturally vegetated state, unless reforestation of  
54 disturbed protection areas is required as part of any site plan approval. When  
55 reforestation of a disturbed protection area is required, it shall be done in  
56 accordance with a planting plan approved by the administrator.
- 57 2. Concentrated runoff from ditches or other manmade conveyances shall be  
58 diverted to diffuse flow before the runoff enters the protection area.
- 59 3. Periodic corrective action to restore diffuse flow shall be taken by the property  
60 owner as necessary to avoid the formation of erosion gullies.
- 61 4. Diffuse flow of runoff shall be maintained in the protection area by dispersing  
62 concentrated flow and reestablishing vegetation.
- 63 5. Surface water protection areas shall be delineated upon any development plan  
64 and shall be noted as protection areas within which no disturbance or  
65 development shall be permitted.
- 66 6. The following impacts are expressly forbidden in surface water protection areas  
67 (including floodways, non-encroachment areas) and associated water bodies:
  - 68 a. The placement of fill or the deposition of any natural or manmade material or  
69 substance;
  - 70 b. New development, substantial improvements, new construction, new  
71 impervious surfaces, the placement of structures or any other form of  
72 development or encroachment, except those associated with public utilities;
  - 73 c. Grading, excavation, the removal of vegetation, or any disturbance of any kind;  
74 except excavation and fill required to plant any new trees or vegetation;
  - 75 d. The ditching, dredging, channelization, straightening, relocation, diking, levying,  
76 or any other alteration or modification of any kind, to surface waters, except  
77 dredging necessary to maintain pre-existing, human-made water impoundments  
78 such as ponds and lakes;
  - 79 e. The routing underground (by culvert or other means) of any surface water,  
80 except to facilitate crossings by approved roads, streets, driveways, greenways,  
81 sidewalks, and other transportation facilities;
  - 82 f. The impoundment of water bodies (this shall not prohibit the maintenance of  
83 existing ponds, lakes, and other impoundments); and
  - 84 g. Any other type of encroachment, disturbance, or modification to floodways, non-  
85 encroachment areas, or other surface water protection areas or associated  
86 surface waters.
- 87 7. The following protection area impacts are permitted; however, design and  
88 construction shall comply with applicable city standards for stabilization of  
89 disturbed areas to minimize negative effects on the quality of surface waters.
  - 90 a. Road crossings for connectivity or transportation links and required utilities  
91 including public and private streets, driveways, and bridges, where the City of  
92 Brevard has granted site plan approval.
  - 93 b. Parallel water and sewer utility installation as approved by City of Brevard.
  - 94 c. Approved public or common area open space, paths and trails. Pathways should  
95 use existing and proposed utility alignments or previously cleared areas and  
96 minimize tree cutting to the maximum extent practicable. To the extent possible,  
97 pathways shall be "on-grade" and shall preserve existing drainage patterns and  
98 avoid drainage structures that concentrate stormwater.
  - 99 d. Incidental drainage improvements/repairs for maintenance provided that such  
100 maintenance does not result in channelization, straightening, or modification of  
101 the natural course of a stream channel or the deforestation of the regulatory  
102 floodway or protection areas.
  - 103 e. Mitigation approved by a local, state, or federal agency acting pursuant to  
104 Sections 401 or 404 of the Federal Clean Water Act.
  - 105 f. Stream bank or stream channel restoration or soil stabilization activities of the  
106 North Carolina Cooperative Extension Service, Transylvania County Soil and  
107 Water Conservation Service, USDA Natural Resources Conservation Service,  
108 Transylvania County, the City of Brevard, the North Carolina Forest Service, or a

- 109 cooperating organization or entity. This exception does not include the  
110 straightening or channelization of any watercourse.
- 111 g. The removal of invasive exotic plant and tree species or trees posing a hazard to  
112 life or property.
- 113 8. Uses permitted in the protection area shall be coordinated to ensure minimal  
114 disturbance of the protection area system. For example, if it is necessary to install  
115 utilities within the protection area and if greenway trails are then to be built, they  
116 should follow these cleared areas instead of necessitating additional clearing.
- 117 9. The approving authority may reduce the required front, rear, or side setbacks by  
118 up to 20 percent of the required distance in order to facilitate compliance with  
119 this section. Additional setback deviations shall be considered as variances by the  
120 BOA in accordance with the procedures set forth in Section 16.8.

121 **13.7. Street classifications.**

122 A. *Determining streets of higher classification*

- 123 1. *Ownership.* When making a determination, the administrator shall first  
124 consider the ownership of each of the roads. State roads are always  
125 considered higher classification than local roads. Local roads are always  
126 considered a higher classification than private roads. If any portion of the  
127 roadway is a State road, regardless of if property in question is adjacent to a  
128 section maintained by the City, the road shall be considered a higher  
129 classification than local roads. This applies to French Broad Street, Main  
130 Street, Whitmire Street, Elm Bend Road, and other streets that change  
131 ownership within the City's jurisdiction. This does not apply to roads that  
132 change ownership at the edge of the City's corporate limits, such as Carolina  
133 Avenue.
- 134 2. *Other factors.* If that does not establish the higher classification, the  
135 administrator shall consider the following factors in making a determination:
- 136 a. The speed limits on the roads, according to the adopted traffic  
137 schedule in Section 66 of the City Code;
- 138 b. The estimated traffic volumes on the roads;
- 139 c. The length of the roads (e.g., a road that is 2 miles long in total  
140 verses a road that only extends ¼ mile); and
- 141 d. The width of the rights-of-way on the roads.